IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2594 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SURESHKUMAR MANUBHAI RAWAL - Petitioner(s)
Versus
VIRAMGAM MUNICIPALITY - Respondent(s)

==========

Appearance :
MR JAGDISH MEHTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

1. Shri Jagdish Mehta, learned counsel for the petitioner; none for the respondent though served. It is to be noted that the State

Government is not joined as party-respondent.

2. The petitioner and number of others were holding cabins in their independent rights; Viramgam Municipality, without issuing notices wanted to demolish the said cabins, therefore, as many as 14 writ applications bearing Special Civil Applications No. 7098 to 7109, 7223 and 7224 were filed before this Court. With the intervention of this Court, the parties entered into an amicable settlement which was recorded by this Court on 27th November, 1995. It was agreed between the parties that each of the petitioner would be given space admeasuring 6 ft. x 8 ft., and such persons would not be allowed to obstruct the road or the pavement. In view of the said settlement, the said writ applications were disposed of.

3. Despite disposal of those writ applications, the question of mesne profits remained to be decided, therefore, M.C.A. No. 187/96 was filed in Special Civil Application No. 7107/95, the said application came to be disposed of on 19.11.96 in view of the statement made by the

learned counsel appearing for the Municipality that the Municipality shall accept the rent or license fees or mesne profits or whatever it is called, from each of the petitioner. It appears that the present petitioner did not file any writ application, but he was also shifted from the original place along with other cabin holders. The petitioner was also allotted space admeasuring 6ft.x 8ft. The petitioner, after the allotment, started making payment of the rent and also paid part of the mesne profits. However, when he went to pay rest of the mesne profits, the Municipality orally refused to accept the mesne profits stating that the petitioner was not joined as party-petitioner in the earlier litigation, therefore, the Municipality would not accept the amount and may dispossess the petitioner. Being aggrieved by the refusal on the part of the Municipality in receiving the mesne profits and the apprehended dispossession, the petitioner has come before this Court.

4. Shri Jagdish Mehta, learned counsel for the

petitioner submits that whether the petitioner was a party-petitioner or not in the earlier litigation would not make any difference, because, along with other cabin holders, the petitioner was also shifted from one place to another and was allotted place for installation of the cabin. His submission is that if equals are to be treated equal, the petitioner cannot be dispossessed and the respondent should respect the earlier orders passed by this Court.

5. Despite service of notice, the respondent is conspicuously absent, they have not chosen to appear in the Court nor have filed any reply.

6. From the earlier orders made by this Court, it would clearly appear that number of the cabin holders were shifted from one place to another and the Municipality entered into various agreements with such cabin holders. Though the petitioner was not a party-petitioner in the earlier litigation, but he was also shifted from the original place along with other cabin holders, was allotted new room and certain agreements were entered into between the

parties. The petitioner, in fact, was treated at par and equal with other cabin holders and if that be so, the respondent now cannot refuse to accept the rent/mesne profits nor can dispossess the petitioner except in accordance with law or after following the procedure known to the law. On submission of copy of this order, the respondent would accept the rent/mesne profits/license fee and the dues till date. If the respondent wishes to dispossess the petitioner, then, they shall have to issue appropriate notice to the petitioner, afford appropriate opportunity of hearing to the petitioner and only then, pass orders.

7. The petition is allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

pirzada/-